

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN M. ARCHAMBAULT,

Plaintiff,

-v-

MICHAEL J. ASTRUE, Commissioner of Social
Security,

Defendant.

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No. 09 Civ. 6363 (RJS) (MHD)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

On July 16, 2009, Plaintiff Steven M. Archambault filed a complaint pursuant to the Social Security Act, 42 U.S.C. § 405(g), appealing Defendant's denial of his application for disability insurance benefits. The Court referred this matter to the Honorable Michael H. Dolinger, Magistrate Judge, on July 30, 2009. On March 1, 2010, the parties cross-moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Plaintiff seeks reversal of the Commissioner's determination that he is not disabled and requests remand solely for calculation of benefits owed, or, in the alternative for further development of the record. Defendant seeks dismissal of the Complaint on the grounds that the denial was supported by substantial evidence. The motions were fully submitted by March 29, 2010.

On December 13, 2010, Magistrate Judge Dolinger issued a Report and Recommendation (the "Report"), recommending that (1) Plaintiff's motion for judgment on the pleadings be granted in part, (2) that Defendant's cross-motion for judgment on the pleadings be denied, and (3) that the case be remanded for further administrative proceedings. In the Report, Magistrate Judge Dolinger advised the parties that the parties shall have fourteen days from the date of

the Report to file written objections and that the failure to file timely objections to the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). Having reviewed Magistrate Judge Dolinger's 104 page Report, the Court finds that the reasoning and conclusions set forth therein are not facially erroneous. Accordingly, the Court adopts the Report in its entirety. For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion for judgment on the pleadings is DENIED, the Commissioner's decision denying disability benefits is vacated, and that the case is remanded for reconsideration.

The clerk of the court is directed to terminate the motions located at Doc. Nos. 8 and 10 and to close this case.

SO ORDERED.

Dated: February 16, 2011
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE